Internal Revenue
bulletin

Bulletin No. 1997–31
August 4, 1997

HIGHLIGHTS OF THIS ISSUE

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

INCOME TAX

Rev. Rul. 97–30, page 12.

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for August 1997.

Ct.D. 2061, page 5.

Punitive damages for personal injuries. Petitioners' punitive damages were not received "on account of" personal injuries; therefore, the gross-income-exclusion provision does not apply and the damages are taxable. **O'Gilvie et al., Minors v. United States.**

EMPLOYEE PLANS

Notice 97–44, page 15.

Weighted average interest rate update. Guidelines are set forth for determining for July 1997, the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for purposes of the full funding limitation of section 412(c)(7) of the Code as amended by the Omnibus Budget Reconciliation Act of 1987 and by the Uruguay Round Agreements Act (GATT).

EXEMPT ORGANIZATIONS

Announcement 97–74, page 16.

A list is given of organizations now classified as private foundations.

Finding Lists begin on page 18.
Announcement Relating to Decisions of the Tax Court begins on page 4.
Index for July begins on page 20.

Department of the Treasury
Internal Revenue Service

Mission of the Service

The purpose of the Internal Revenue Service is to collect the proper amount of tax revenue at the least cost; serve the public by continually improving the quality of our products and services; and perform in a manner warranting the highest degree of public confidence in our integrity, efficiency, and fairness.

Statement of Principles of Internal Revenue Tax Administration

The function of the Internal Revenue Service is to administer the Internal Revenue Code. Tax policy for raising revenue is determined by Congress.

With this in mind, it is the duty of the Service to carry out that policy by correctly applying the laws enacted by Congress; to determine the reasonable meaning of various Code provisions in light of the Congressional purpose in enacting them; and to perform this work in a fair and impartial manner, with neither a government nor a taxpayer point of view.

At the heart of administration is interpretation of the Code. It is the responsibility of each person in the Service, charged with the duty of interpreting the law, to try to find the true meaning of the statutory provision and not to adopt a strained construction in the belief that he or she is "protecting the revenue." The revenue is properly protected only when we ascertain and apply the true meaning of the statute.

The Service also has the responsibility of applying and administering the law in a reasonable, practical manner. Issues should only be raised by examining officers when they have merit, never arbitrarily or for trading purposes. At the same time, the examining officer should never hesitate to raise a meritorious issue. It is also important that care be exercised not to raise an issue or to ask a court to adopt a position inconsistent with an established Service position.

Administration should be both reasonable and vigorous. It should be conducted with as little delay as possible and with great courtesy and considerateness. It should never try to overreach, and should be reasonable within the bounds of law and sound administration. It should, however, be vigorous in requiring compliance with law and it should be relentless in its attack on unreal tax devices and fraud.

Introduction

The Internal Revenue Bulletin is the authoritative instrument of the Commissioner of Internal Revenue for announcing official rulings and procedures of the Internal Revenue Service and for publishing Treasury Decisions, Executive Orders, Tax Conventions, legislation, court decisions, and other items of general interest. It is published weekly and may be obtained from the Superintendent of Documents on a subscription basis. Bulletin contents of a permanent nature are consolidated semiannually into Cumulative Bulletins, which are sold on a single-copy basis.

It is the policy of the Service to publish in the Bulletin all substantive rulings necessary to promote a uniform application of the tax laws, including all rulings that supersede, revoke, modify, or amend any of those previously published in the Bulletin. All published rulings apply retroactively unless otherwise indicated. Procedures relating solely to matters of internal management are not published; however, statements of internal practices and procedures that affect the rights and duties of taxpayers are published.

Revenue rulings represent the conclusions of the Service on the application of the law to the pivotal facts stated in the revenue ruling. In those based on positions taken in rulings to taxpayers or technical advice to Service field offices, identifying details and information of a confidential nature are deleted to prevent unwarranted invasions of privacy and to comply with statutory requirements.

Rulings and procedures reported in the Bulletin do not have the force and effect of Treasury Department Regulations, but they may be used as precedents. Unpublished rulings will not be relied on, used, or cited as precedents by Service personnel in the disposition of other cases. In applying published rulings and procedures, the effect of subsequent legislation, regulations, court decisions, rulings, and procedures must be considered, and Service personnel and others concerned are cautioned against reaching the same conclusions in other cases unless the facts and circumstances are substantially the same.

The Bulletin is divided into four parts as follows:

Part I.—1986 Code.
This part includes rulings and decisions based on provisions of the Internal Revenue Code of 1986.

Part II.—Treaties and Tax Legislation.
This part is divided into two subparts as follows: Subpart A, Tax Conventions, and Subpart B, Legislation and Related Committee Reports.

Part III.—Administrative, Procedural, and Miscellaneous.
To the extent practicable, pertinent cross references to these subjects are contained in the other Parts and Subparts. Also included in this part are Bank Secrecy Act Administrative Rulings. Bank Secrecy Act Administrative Rulings are issued by the Department of the Treasury's Office of the Assistant Secretary (Enforcement).

Part IV.—Items of General Interest.
With the exception of the Notice of Proposed Rulemaking and the disbarment and suspension list included in this part, none of these announcements are consolidated in the Cumulative Bulletins.

The first Bulletin for each month includes a cumulative index for the matters published during the preceding months. These monthly indexes are cumulated on a quarterly and semiannual basis, and are published in the first Bulletin of the succeeding quarterly and semiannual period, respectively.

For sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

Announcement Relating to Court Decisions

It is the policy of the Internal Revenue Service to announce at an early date whether it will follow the holdings in certain cases. An Action on Decision is the document making such an announcement. An Action on Decision will be issued at the discretion of the Service only on unappealed issues decided adverse to the government. Generally, an Action on Decision is issued where its guidance would be helpful to Service personnel working with the same or similar issues. Unlike a Treasury Regulation or a Revenue Ruling, an Action on Decision is not an affirmative statement of Service position. It is not intended to serve as public guidance and may not be cited as precedent.

Actions on Decisions shall be relied upon within the Service only as conclusions applying the law to the facts in the particular case at the time the Action on Decision was issued. Caution should be exercised in extending the recommendation of the Action on Decision to similar cases where the facts are different. Moreover, the recommendation in the Action on Decision may be superseded by new legislation, regulations, rulings, cases, or Actions on Decisions.

Prior to 1991, the Service published acquiescence or nonacquiescence only in certain regular Tax Court opinions. The Service has expanded its acquiescence program to include other civil tax cases where guidance is determined to be helpful. Accordingly, the Service now may acquiesce or nonacquiesce in the holdings of memorandum Tax Court opinions, as well as those of the United States District Courts, Claims Court, and Circuit Courts of Appeal. Regardless of the court deciding the case, the recommendation of any Action on Decision will be published in the Internal Revenue Bulletin.

The recommendation in every Action on Decision will be summarized as acquiescence, acquiescence in result only, or nonacquiescence. Both "acquiescence" and "acquiescence in result only" mean that the Service accepts the holding of the court in a case and that the Service will follow it in disposing of cases with the same controlling facts. However, "acquiescence" indicates neither approval nor disapproval of the reasons assigned by the court for its conclusions; whereas, "acquiescence in result only" indicates disagreement or concern with some or all of those reasons. Nonacquiescence signifies that, although no further review was sought, the Service does not agree with the holding of the court and, generally, will not follow the decision in disposing of cases involving other taxpayers. In reference to an opinion of a circuit court of appeals, a nonacquiescence indicates that the Service will not follow the holding on a nationwide basis. However, the Service will recognize the precedential impact of the opinion on cases arising within the venue of the deciding circuit.

The announcements published in the weekly Internal Revenue Bulletins are consolidated semiannually and annually. The semiannual consolidation appears in the first Bulletin for July and in the Cumulative Bulletin for the first half of the year, and the annual consolidation appears in the first Bulletin for the following January and in the Cumulative Bulletin for the last half of the year.

The Commissioner ACQUIESCES in the following decision:

The May Department Stores Co. v. United States,[1]
36 Fed. Cl. 680 (1996).

[1] Acquiescence relating to whether interest accrued on the taxpayers' underpayments of tax for 1983 and 1984 from the due date of the first or third estimated tax payment for the next succeeding years.

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 42. — Low-Income Housing Credit

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 1997. See Rev. Rul. 97–30, page 12.

Section 104. — Compensation for Injuries or Sickness Ct.D. 2061

SUPREME COURT
OF THE UNITED STATES

No. 95–966*

O'GILVIE ET AL., MINORS *v.* UNITED STATES

519 U.S. ___

CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

*December 10, 1996**

Syllabus

Petitioners, the husband and two children of a woman who died of toxic shock syndrome, received a jury award of $1,525,000 actual damages and $10 million punitive damages in a tort suit based on Kansas law against the maker of the product that caused decedent's death. They paid federal income tax insofar as the award's proceeds represented punitive damages, but immediately sought a refund. Procedurally speaking, this litigation represents the consolidation of two cases brought in the same Federal District Court: the husband's suit against the Government for a refund, and the Government's suit against the children to recover the refund that the Government had made to the children earlier. The District Court found for petitioners under 26 U.S.C. §104(a)(2), which, as it read in 1988, excluded from "gross income," the "*amount of any damages received . . . on account of personal injuries or sickness.*" (Emphasis added.) The court held on the merits that the italicized language includes punitive damages, thereby excluding such damages from gross income. The Tenth Circuit reversed, holding that the exclusionary provision does not cover punitive damages.

Held:

1. Petitioners' punitive damages were not received "*on account of*" personal injuries; hence the gross-income-exclusion provision does not apply and the damages are taxable. Pp. 2–11.

(a) Although the phrase "on account of" does not unambiguously define itself, several factors prompt this Court to agree with the Government when it interprets the exclusionary provision to apply to those personal injury lawsuit damages that were awarded by reason of, or because of, the personal injuries, and not to punitive damages that do not compensate injury, but are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence. For one thing, the Government's interpretation gives the phrase "on account of" a meaning consistent with the dictionary definition. More important, in *Commissioner* v. *Schleier*, 515 U.S. _____, this Court came close to resolving the statute's ambiguity in the Government's favor when it said that the statute covers pain and suffering damages, medical expenses, and lost wages in an ordinary tort case because they are "designed to compensate . . . victims" *id.*, at ____, n. 5, but does not apply to elements of damages that are "punitive in nature," *id.*, at _____. The Government's reading also is more faithful to the statutory provision's history and basic tax-related purpose of excluding compensatory damages that restore a victim's lost, nontaxable "capital." Petitioners suggest no very good reason *why* Congress might have wanted the exclusion to have covered these punitive damages, which are not a substitute for any normally untaxed personal (or financial) quality, good, or "asset" and do not compensate for any kind of loss. Pp. 2–8.

(b) Petitioners' three arguments to the contrary—that certain words or phrases in the original, or current, version of the statute work in their favor; that the exclusion of punitive damages from gross income may be justified by Congress' desire to be generous to tort victims and to avoid such administrative problems as separating punitive from compensatory portions of a global settlement or determining the extent to which a punitive damages award is itself intended to compensate; and that their position is supported by a 1989 statutory amendment that specifically says that the gross income exclusion does not apply to any punitive damages in connection with a case not involving physical injury or sickness—are not sufficiently persuasive to overcome the Government's interpretation. Pp. 8–11.

2. Petitioners' two case-specific procedural arguments—that the Government's lawsuit was untimely and that its original notice of appeal was filed a few days late—are rejected. Pp. 12–14.

66 F. 3d 1550, affirmed.

BREYER, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and STEVENS, KENNEDY, SOUTER, and GINSBURG, JJ., joined. SCALIA, J., filed a dissenting opinion, in which O'CONNOR and THOMAS, JJ., joined.

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SUPREME COURT
OF THE UNITED STATES

Nos. 95–966 AND 95–977

KEVIN M. O'GILVIE AND STEPHANIE L. O'GILVIE, MINORS, PETITIONERS

95-966 *v.*

UNITED STATES

KELLY M. O'GILVIE, PETITIONER

95-977 *v.*

UNITED STATES

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE TENTH CIRCUIT

[December 10, 1996]

JUSTICE BRYER delivered the opinion of the Court.

Internal Revenue Code §104(a)(2), as it read in 1988, excluded from "gross income," the

> "amount of any *damages received* (whether *by suit* or agreement and whether as lump sums or as periodic payments) *on account of personal injuries or sickness.*" 26 U.S.C. §104 (a)(2) (1988 ed.) (emphasis added).

The issue before us is whether this provision applies to (and thereby makes nontaxable) punitive damages received by a

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* Together with No. 95–977, *O'Gilvie* v. *United States*, also on certiorari to the same court.

plaintiff in a tort suit for personal injuries. We conclude that the punitive damages received here were not received *"on account of"* personal injuries; hence the provision does not apply and the damages are taxable.

I

Petitioners in this litigation are the husband and two children of Betty O'Gilvie, who died in 1983 of toxic shock syndrome. Her husband, Kelly, brought a tort suit (on his own behalf and that of her estate) based on Kansas law against the maker of the product that caused Betty O'Gilvie's death. Eventually, he and the two children received the net proceeds of a jury award of $1,525,000 actual damages and $10 million punitive damages. Insofar as the proceeds represented punitive damages, petitioners paid income tax on the proceeds but immediately sought a refund.

The litigation before us concerns petitioners' legal entitlement to that refund. Procedurally speaking, the litigation represents the consolidation of two cases brought in the same Federal District Court: Kelly's suit against the Government for a refund, and the Government's suit against the children to recover the refund that the Government had made to the children earlier. 26 U.S.C. §7405(b) (authorizing suits by the United States to recover refunds erroneously made). The Federal District Court held on the merits that the statutory phrase "damages . . . on account of personal injury or sickness," includes punitive damages, thereby excluding punitive damages from gross income and entitling Kelly to obtain, and the children to keep, their refund. The Court of Appeals for the Tenth Circuit, however, reversed the District Court. Along with the Fourth, Ninth and Federal Circuits, it held that the exclusionary provision does not cover punitive damages. Because the Sixth Circuit has held the contrary, the Circuits are divided about the proper interpretation of the provision. We granted certiorari to resolve this conflict.

II

Petitioners received the punitive damages at issue here "by suit,"—indeed "by" an ordinary "suit" for "personal injuries." Contrast *United States* v. *Burke*, 504 U.S. 229 (1992) (§104(a)(2) exclusion not applicable to backpay awarded under Title VII of the Civil Rights Act of 1964 because the claim was not based upon "'tort or tort type rights,'" *id*., at 233); *Commissioner* v. *Schleier*, 515 U.S. _____ (1995) (alternative holding) (Age Discrimination in Employment Act of 1967 (ADEA) claim is similar to Title VII claim in *Burke* in this respect). These legal circumstances bring those damages within the gross-income-exclusion provision, however, only if the petitioners also "received" those damages "*on account of*" the "personal injuries." And the phrase "on account of" does not unambiguously define itself.

On one linguistic interpretation of those words, that of petitioners, they require no more than a "but-for" connection between "any" damages and a lawsuit for personal injuries. They would thereby bring virtually all personal injury lawsuit damages within the scope of the provision, since: "but for the personal injury, there would be no lawsuit, and but for the lawsuit, there would be no damages."

On the Government's alternative interpretation, however, those words impose a stronger causal connection, making the provision applicable only to those personal injury lawsuit damages that were awarded by reason of, or because of, the personal injuries. To put the matter more specifically, they would make the section inapplicable to punitive damages, where those damages

> "'are not compensation for injury [but] [i]nstead . . . are private fines levied by civil juries to punish reprehensible conduct and to deter its future occurrence.'" *Electrical Workers* v. *Foust*, 442 U.S. 42, 48 (1979), quoting *Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 350 (1974) (footnote omitted).

The Government says that such damages were not "received . . . on account of" the personal injuries, but rather were awarded "on account of" a defendant's reprehensible conduct and the jury's need to punish and to deter it. Hence, despite some historical uncertainty about the matter, see Rev. Rul. 75–45, 1975–1 Cum. Bull. 47, revoked by Rev. Rul. 84–108, 1984–2 Cum. Bull. 32, the Government now concludes that these punitive damages fall outside the statute's coverage.

We agree with the Government's interpretation of the statute. For one thing, its interpretation gives the phrase "on account of" a meaning consistent with the dictionary definition. See, *e.g.*, Webster's Third New International Dictionary 13 (1981) ("for the sake of: by reason of: because of").

More important, in *Schleier, supra,* we came close to resolving the statute's ambiguity in the Government's favor. That case did not involve damages received in an ordinary tort suit; it involved liquidated damages and backpay received in a settlement of a lawsuit charging a violation of the Age Discrimination in Employment Act. Nonetheless, in deciding one of the issues there presented (whether the provision now before us covered ADEA liquidated damages), we contrasted the elements of an ordinary tort recovery with ADEA liquidated damages. We said that pain and suffering damages, medical expenses, and lost wages in an ordinary tort case are covered by the statute and hence excluded from income

> "not simply because the taxpayer received a tort settlement, but rather because each element . . . satisfies the requirement . . . that the damages were received 'on account of personal injuries or sickness.'" *Id.*, at _____ (slip op., at 6–7).

In holding that ADEA liquidated damages are not covered, we said that they are not "designed to compensate ADEA victims," *id.*, at _____, n. 5 (slip op., at 9, n. 5); instead, they are "'punitive in nature,'" *id.*, at _____ (slip op., at 8) (quoting *Trans World Airlines, Inc.* v. *Thurston*, 469 U.S. 111, 125 (1985)).

Applying the same reasoning here would lead to the conclusion that the punitive damages are not covered because they are an element of damages not "designed to compensate . . . victims," *Schleier*, 515 U.S., at _____ (slip op., at 9, n. 5); rather they are "'punitive in nature.'" *Ibid.* Although we gave other reasons for our holding in *Schleier* as well, we explicitly labeled this reason an "independent" ground in support of our decision, *id.*, at _____ (slip op., at 11). We cannot accept petitioners' claim that it was simply a dictum.

We also find the Government's reading more faithful to the history of the statutory provision as well as the basic tax-related purpose that the history reveals. That history begins in approximately 1918. At that time, this Court had recently

decided several cases based on the principle that a restoration of capital was not income; hence it fell outside the definition of "income" upon which the law imposed a tax. *E.g.*, *Doyle* v. *Mitchell Brothers Co.*, 247 U.S. 179, 187 (1918); *Southern Pacific Co.* v. *Lowe*, 247 U.S. 330, 335 (1918). The Attorney General then advised the Secretary of the Treasury that proceeds of an accident insurance policy should be treated as nontaxable because they primarily

> "substitute . . . capital which is the source of *future* periodical income . . . merely tak[ing] the place of capital in human ability which was destroyed by the accident. They are therefore [nontaxable] 'capital' as distinguished from 'income' receipts." 31 Op. Atty. Gen. 304, 308 (1918).

The Treasury Department added that

> "upon similar principles . . . an amount received by an individual as the result of a suit or compromise for personal injuries sustained by him through accident is not income [that is] taxable . . . ." T. D. 2747, 20 Treas. Dec. Int. Rev. 457 (1918).

Soon thereafter, Congress enacted the first predecessor of the provision before us. That provision excluded from income

> "[a]mounts received, through accident or health insurance or under workmen's compensation acts, as compensation for personal injuries or sickness, plus the amount of any damages received whether by suit or agreement on account of such injuries or sickness." Revenue Act of 1918, ch. 18, §213(b)(6), 40 Stat. 1066.

The provision is similar to the cited materials from the Attorney General and the Secretary of the Treasury in language and structure, all of which suggests that Congress sought, in enacting the statute, to codify the Treasury's basic approach. A contemporaneous House Report, insofar as relevant, confirms this similarity of approach, for it says:

> "Under the present law it is doubtful whether amounts received through accident or health insurance, or under workmen's compensation acts, as compensation for personal injury or sickness, and damages received on account of such injuries or sickness, are required to be included in gross income. The proposed bill provides that such amounts shall not be included in gross income." H. R. Rep. No. 767, pp. 9–10 (1918).

This history and the approach it reflects suggest there is no strong reason for trying to interpret the statute's language to reach beyond those damages that, making up for a loss, seek to make a victim whole, or, speaking very loosely, "return the victim's personal or financial capital."

We concede that the original provision's language does go beyond what one might expect a purely tax-policy-related "human capital" rationale to justify. That is because the language excludes from taxation not only those damages that aim to substitute for a victim's physical or personal well-being—personal assets that the Government does not tax and would not have taxed had the victim not lost them. It also excludes from taxation those damages that substitute, say, for lost wages, which would have been taxed had the victim earned them. To that extent, the provision can make the compensated taxpayer better off from a tax perspective than had the personal injury not taken place.

But to say this is not to support cutting the statute totally free from its original moorings in victim loss. The statute's failure to separate those compensatory elements of damages (or accident insurance proceeds) one from the other does not change its original focus upon damages that restore a loss, that seek to make a victim whole, with a tax-equality objective providing an important part of, even if not the entirety of, the statute's rationale. All this is to say that the Government's interpretation of the current provision (the wording of which has not changed significantly from the original) is more consistent than is petitioners' with the statute's original focus.

Finally, we have asked *why* Congress might have wanted the exclusion to have covered these punitive damages, and we have found no very good answer. Those damages are not a substitute for any normally untaxed personal (or financial) quality, good, or "asset." They do not compensate for any kind of loss. The statute's language does not require, or strongly suggest, their exclusion from income. And we can find no evidence that congressional generosity or concern for administrative convenience stretched beyond the bounds of an interpretation that would distinguish compensatory from noncompensatory damages.

Of course, as we have just said, from the perspective of tax policy one might argue that noncompensatory punitive damages and, for example, compensatory lost wages are much the same thing. That is, in both instances, exclusion from gross income provides the taxpayer with a windfall. This circumstance alone, however, does not argue strongly for an interpretation that covers punitive damages, for coverage of compensatory damages has both language and history in its favor to a degree that coverage of noncompensatory punitive damages does not. Moreover, this policy argument assumes that coverage of lost wages is something of an anomaly; if so, that circumstance would not justify the extension of the anomaly or the creation of another. See Wolfman, Current Issues of Federal Tax Policy, 16 U. Ark. Little Rock L. J. 543, 549–550 (1994) ("[T]o build upon" what is, from a tax policy perspective, the less easily explained portion "of the otherwise rational exemption for personal injury," simply "does not make sense").

Petitioners make three sorts of arguments to the contrary. First, they emphasize certain words or phrases in the original, or current, provision that work in their favor. For example, they stress the word "any" in the phrase "any damages." And they note that in both original and current versions Congress referred to certain amounts of money received (from workmen's compensation, for example) as "amounts received . . . as compensation," while here they refer only to "damages received" without adding the limiting phrase "as compensation." 26 U.S.C. §104(a); Revenue Act of 1918, §213(b)(6), 40 Stat. 1066. They add that in the original version, the words "on account of personal injuries" might have referred to, and modified, the kind of lawsuit, not the kind of damages. And they find support for this view in the second sentence of the Treasury Regulation first adopted in 1958 which says:

> "The term 'damages received (whether by suit or agreement' means an amount received (other than workmen's compensation) through prosecution of a legal suit or action based upon tort or

tort type rights, or through a settlement agreement entered into in lieu of such prosecution." 26 CFR §1.104–1(c) (1996).

These arguments, however, show only that one can reasonably read the statute's language in different ways—the very assumption upon which our analysis rests. They do not overcome our interpretation of the provision in *Schleier,* nor do they change the provision's history. The help that the Treasury Regulation's second sentence gives the petitioners is offset by its *first* sentence, which says that the exclusion applies to damages received "on account of personal injuries or sickness," and which we have held sets forth an independent requirement. *Schleier,* 515 U.S., at ____ (slip op., at 14). See Appendix, *infra,* at 16.

Second, petitioners argue that to some extent the purposes that might have led Congress to exclude, say, lost wages from income would also have led Congress to exclude punitive damages, for doing so is both generous to victims and avoids such administrative problems as separating punitive from compensatory portions of a global settlement or determining the extent to which a punitive damages award is itself intended to compensate.

Our problem with these arguments is one of degree. Tax generosity presumably has its limits. The administrative problem of distinguishing punitive from compensatory elements is likely to be less serious than, say, distinguishing among the compensatory elements of a settlement (which difficulty might account for the statute's treatment of, say, lost wages). Cf. *supra* p. 8. And, of course, the problem of identifying the elements of an ostensibly punitive award does not exist where, as here, relevant state law makes clear that the damages at issue are not at all compensatory, but entirely punitive. *Brewer* v. *Home-Stake Production Co.,* 200 Kan. 96, 100, 434 P. 2d 828, 831 (1967) ("[E]xemplary damages are not regarded as compensatory in any degree"); accord, *Smith* v. *Printup,* 254 Kan. 315, 866 P. 2d 985 (1993); *Folks* v. *Kansas Power & Light Co.,* 243 Kan. 57, 755 P. 2d 1319 (1988); *Nordstrom* v. *Miller,* 227 Kan. 59, 605 P. 2d 545 (1980).

Third, petitioners rely upon a later enacted law. In 1989, Congress amended the law so that it now specifically says the personal injury exclusion from gross income

> "shall not apply to any punitive damages in connection with a case not involving physical injury or physical sickness." 26 U.S.C. §104(a) (1994).

Why, petitioners ask, would Congress have enacted this amendment removing punitive damages (in nonphysical injury cases) unless Congress believed that, in the amendment's absence, punitive damages did fall within the provision's coverage?

The short answer to this question is that Congress might simply have thought that the then-current law about the provision's treatment of punitive damages—in cases of physical and nonphysical injuries—was unclear, that it wanted to clarify the matter in respect to nonphysical injuries, but it wanted to leave the law where it found it in respect to physical injuries. The fact that the law was indeed uncertain at the time supports this view. Compare Rev. Rul. 84–108, 1984–2 Cum. Bull. 32, with *e.g., Roemer* v. *Commissioner,* 716 F. 2d 693 (CA9 1983); *Miller* v. *Commissioner,* 93 T. C. 330 (1989), rev'd 914 F. 2d 586 (CA4 1990).

The 1989 amendment's legislative history, insofar as relevant, offers further support. The amendment grew out of the Senate's refusal to agree to a House bill that would have made all damages in nonphysical personal injury cases taxable. The Senate was willing to specify only that the Government could tax punitive damages in such cases. Compare H. R. Rep. No. 101–247, p. 1355 (1989), with H. R. Conf. Rep. No. 101–386, pp. 622–623 (1989). Congress' primary focus, in other words, was upon what to do about nonphysical personal injuries, not upon the provision's coverage of punitive damages under pre-existing law.

We add that, in any event, the view of a later Congress cannot control the interpretation of an earlier enacted statute. *United States* v. *Price,* 361 U.S. 304 (1960); *Higgins* v. *Smith,* 308 U.S. 473 (1940). But cf. *Burke,* 504 U.S., at 235, n. 6 (including a passing reference to the 1989 amendment, in dicta, as support for a view somewhat like that of petitioners).

(Although neither party has argued that it is relevant, we note in passing that §1605 of the Small Business Job Protection Act of 1996, Pub. L. 104–188, 110 Stat. 1838, explicitly excepts most punitive damages from the exclusion provided by §104(a)(2). Because it is of prospective application, the section does not apply here. The Conference Report on the new law says that "[n]o inference is intended" as to the proper interpretation of section 104(a)(2) prior to amendment. H. R. Conf. Rep. No. 104–737, p. 301 (1996).)

The upshot is that we do not find petitioners' arguments sufficiently persuasive. And, for the reasons set out above, *supra,* at 3–8, we agree with the Government's interpretation of the statute.

III

Petitioners have raised two further issues, specific to the procedural posture of this litigation. First, the O'Gilvie children point out that the Government had initially accepted their claim for a refund and wrote those checks on July 6, 1990. The Government later changed its mind and, on July 9, 1992, two years plus three days later, filed suit against them seeking the return of a refund erroneously made. 26 U.S.C. §7405(b) (authorizing a "civil action brought in the name of the United States" to recover any "portion of a tax . . . which has been erroneously refunded"). They add that the relevant statute of limitations specifies that recovery of the refund "shall be allowed only if such suit is begun within 2 years after the making of such refund." §6532(b).

The children concede that they *received* the refund checks on July 9, 1990, and they agree that if the limitation period runs from the date of receipt—if, as the Government argues, that is the date of the "making of" the refund—the Government's suit was timely. But the children say that the refund was made on, and the limitations period runs from, the date the Government *mailed* the checks (presumably July 6, 7, or 8) in which case the Government brought this suit one or two or three days too late.

In our view, the Government is correct in its claim that its lawsuit was timely. The language of the statute admits of both interpretations. But the law ordinarily provides that an action to recover mistaken payments of money "accrues upon the receipt of payment," *New Bedford* v. *Lloyd Investment Associates, Inc.,* 363 Mass. 112, 119, 292 N. E. 2d 688, 692 (1973); accord *Sizemore* v. *E. T. Barwick*

Industries, Inc., 225 Tenn. 226, 233, 465 S. W. 2d 873, 876 (1971) ("'the time of making the . . . payment . . . was the date of actual receipt'"), unless, as in some States and in some cases, it accrues upon the still later date of the mistake's discovery, see Allen & Lamkin, When Statute of Limitations Begins to Run Against Action to Recover Money Paid By Mistake, 79 A.L.R. 3d 754, 766–769 (1977). We are not aware of any good reason why Congress would have intended a different result where the nature of the claim is so similar to a traditional action for money paid by mistake—an action the roots of which can be found in the old common-law claim of "assumpsit" or "money had and received." *New Bedford, supra*, at 118. The lower courts and commentators have reached a similar conclusion. *United States* v. *Carter*, 906 F. 2d 1375 (CA9 1990); *Akers* v. *United States*, 541 F. Supp. 65, 67 (M. D. Tenn. 1981); *United States* v. *Woodmansee*, 388 F. Supp. 36, 46 (N. D. Cal. 1975), rev'd on other grounds, 578 F. 2d 1302 (CA9 1978); 14 J. Mertens Law of Federal Income Taxation §54A.69 (1995); Kafka & Cavanagh, Litigation of Federal Civil Tax Controversies §20.03, p. 20–15 (2d ed. 1995). That conclusion is consistent with dicta in an earlier case from this Court, *United States* v. *Wurts*, 303 U.S. 414, 417–418 (1938), as well as with this Court's normal practice of construing ambiguous statutes of limitations in Government action in the Government's favor. *E.g., Badaracco* v. *Commissioner*, 464 U.S. 386, 391 (1984).

We concede the children's argument that a "date of mailing" interpretation produces marginally greater certainty, for such a rule normally would refer the court to the postmark to establish the date. But there is no indication that a "date of receipt" rule has proved difficult to administer in ordinary state or common-law actions for money paid erroneously. The date the check clears, after all, sets an outer bound.

Second, Kelly O'Gilvie says that the Court of Appeals should not have considered the Government's original appeal from the District Court's judgment in his favor because, in his view, the Government filed its notice of appeal a few days too late. The Court of Appeals describes the circumstances underlying this case-specific issue in its opinion. We agree with its determination of the matter for the reasons it has there set forth.

The judgment of the Court of Appeals is

affirmed.

APPENDIX
TO OPINION OF THE COURT

Section 104(a), in 1988, read as follows:

"Compensation for injuries or sickness

"(a) In general.—Except in the case of amounts attributable to (and not in excess of) deductions allowed under section 213 (relating to medical, etc., expenses) for any prior taxable year, gross income does not include—

"(1) amounts received under workmen's compensation acts as compensation for personal injuries or sickness;

"(2) the amount of any damages received (whether by suite or agreement and whether as lump sums or as periodic payments) on account of personal injuries or sickness;

"(3) amounts received through accident or health insurance for personal injuries or sickness (other than amounts received by an employee, to the extent such amounts (A) are attributable to contributions by the employer which were not includible in the gross income of the employee, or (B) are paid by the employer);

"(4) amounts received as a pension, annuity, or similar allowance for personal injuries or sickness resulting from active service in the armed forces of any country or in the Coast and Geodetic Survey or the Public Health Service, or as a disability annuity payable under the provisions of section 808 of the Foreign Service Act of 1980; and

"(5) amounts received by an individual as disability income attributable to injuries incurred as a direct result of a violent attack which the Secretary of State determines to be a terrorist attack and which occurred while such individual was an employee of the United States engaged in the performance of hisofficial duties outside the United States." 26 U.S.C. §104 (1988 ed.).

In 1989, §104(a) was amended, adding, among other things, the following language:

"Paragraph (2) shall not apply to any punitive damages in connection with a case not involving physical injury or physical sickness." 26 U. S. C. §104(a) (1994).

Treasury Regulation §1.104-l(c) provides:

"Section 104(a)(2) excludes from gross income the amount of any damages received (whether by suit or agreement) on account of personal injuries or sickness. The term 'damages received (whether by suit or agreement)' means an amount received (other than workmen's compensation) through prosecution of a legal suit or action based upon tort or tort type rights, or through a settlement agreement entered into in lieu of such prosecution." 26 CFR §1.104-1(c) (1996).

JUSTICE SCALIA, with whom JUSTICE O'CONNOR and JUSTICE THOMAS join, dissenting.

Section 104(a)(2), as it stood at the time relevant to these cases, provided an exclusion from income for "any damages received . . . on account of personal injuries or sickness." 26 U.S.C. §104(a)(2) (1988 ed.). The Court is of the view that this phrase, in isolation, is just as susceptible of a meaning that includes only compensatory damages as it is of a broader meaning that includes punitive damages as well. *Ante*, at 3–4. I do not agree. The Court greatly understates the connection between an award of punitive damages and the personal injury complained of, describing it as nothing more than "but for" causality, *ante*, at 3. It seems to me that the personal injury is as proximate a cause of the punitive damages as it is of the compensatory damages; in both cases it is the *reason* the damages are awarded. That is *why* punitive damages are called *damages.* To be sure, punitive damages require intentional, blameworthy conduct, which can be said to be a coequal reason they are awarded. But negligent (or intentional) conduct occupies the same role of coequal causality with regard to compensatory damages. Both types of damages are "received on account of" the personal injury.

The nub of the matter, it seems to me, is this: If one were to be asked, by a

lawyer from another legal system, "What damages can be received on account of personal injuries in the United States?" surely the correct answer would be "Compensatory damages and punitive damages —the former to compensate for the inflicting of the personal injuries, and the latter to punish for the inflicting of them." If, as the Court asserts, the phrase "damages received on account of personal injuries" *can* be used to refer only to the former category, that is only because people sometimes *can* be imprecise. The notion that Congress carefully and precisely used the phrase "damages received on account of personal injuries" to segregate out *compensatory* damages seems to me entirely fanciful. That is neither the exact nor the ordinary meaning of the phrase, and hence not the one that the statute should be understood to intend.

What I think to be the fair meaning of the phrase in isolation becomes even clearer when the phrase is considered in its statutory context. The Court proceeds too quickly from its erroneous premise of ambiguity to analysis of the history and policy behind §104(a)(2). *Ante,* at 5–8. Ambiguity in isolation, even if it existed, would not end the textual inquiry. Statutory construction, we have said, is a "holistic endeavor." *United Sav. Assn. of Tex.* v. *Timbers of Inwood Forest Associates, Ltd.,* 484 U.S. 365, 371 (1988). "A provision that may seem ambiguous in isolation is often clarified by the remainder of the statutory scheme." *Ibid.*

Section 104(a)(2) appears immediately after another provision, §104(a)(1), which parallels §104(a)(2) in several respects but does not use the critical phrase "on account of":

> "(a) [G]ross income does not include—
> "(1) amounts received under workmen's compensation acts *as compensation for* personal injuries or sickness;
> "(2) the amount of any damages received . . . *on account of* personal injuries or sickness." (Emphasis added.)

Although §104(a)(1) excludes amounts received "as compensation for" personal injuries or sickness, while §104(a)(2) excludes amounts received "on account of" personal injuries or sickness, the Court reads the two phrases to mean precisely the same thing. That is not sound textual interpretation. "[W]hen the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended." 2A N. Singer, Sutherland on Statutory Construction §46.07 (5th ed. 1992 and Supp. 1996). See, *e.g., Russello* v. *United States,* 464 U.S. 16, 23 (1983). This principle of construction has its limits, of course: Use of different terminology in differing contexts might have little significance. But here the contrasting phrases appear in adjoining provisions that address precisely the same subject matter and that even have identical grammatical structure.

The contrast between the two usages is even more striking in the original statute that enacted them. The Revenue Act of 1918 combined subsections (a)(1) and (a)(2) of §104, together with (a)(3) (which provides an exclusion from income for amounts received through accident or health insurance for personal injuries or sickness), into a single subsection, which provided:

> "'Gross income' . . . [d]oes not include . . .:
> "(6) Amounts received, through accident or health insurance or under workmen's compensation acts, *as compensation for* personal injuries or sickness, plus the amount of any damages received . . . *on account of* such injuries or sickness." §213(b)(6) of the Revenue Act of 1918, 40 Stat. 1065–66 (emphasis added).

The contrast between the first exclusion and the second could not be more clear. Had Congress intended the latter provision to cover only damages received "as compensation for" personal injuries or sickness, it could have written "amounts received, through accident or health insurance, under workmen's compensation acts, or in damages, as compensation for personal injuries or sickness." Instead, it tacked on an additional phrase "plus the amount of, etc." with no apparent purpose except to make clear that not *only* compensatory damages were covered by the exclusion.

The Court maintains, however, that the Government's reading of §104(a)(2) is "more faithful to [its] history." *Ante,* at 5. The "history" to which the Court refers is not statutory history of the sort just discussed—prior enactments approved by earlier Congresses and revised or amended by later ones to produce the current text. Indeed, it is not "history" from within even a small portion of Congress, since the House Committee Report the Court cites, standing by itself, is uninformative, saying only that "[u]nder the present law it is doubtful whether . . . damages received on account of [personal] injuries or sickness are required to be included in gross income." H. R. Rep. No. 767, 65th Cong., 2d Sess., 9–10 (1918). The Court makes this snippet of legislative history relevant by citing as pertinent an antecedent Treasury Department decision, which concludes on the basis of recent judicial decisions that amounts received from prosecution or compromise of a personal-injury suit are not taxable *because they are a return of capital. Ante,* at 5–6 (citing T. D. 2747, 20 Treas. Dec. Int. Rev. 457 (1918)).

One might expect the Court to conclude from this that the Members of Congress (on the unrealistic assumption that they knew about the Executive-Branch opinion) meant the statutory language to cover only return of capital, the source of the "doubt" to which the Committee Report referred. But of course the Court cannot draw that logical conclusion, since even if it is applied only to compensatory damages the statute obviously and undeniably covers *more* than mere return of "human capital," namely, reimbursement for lost income, which would be a large proportion (indeed perhaps the majority) of any damages award. The Court concedes this is so, but asserts that this inconsistency is not enough "to support cutting the statute totally free from its original moorings," *ante,* at 7, by which I assume it means the Treasury Decision, however erroneous it might have been as to the "capital" nature of compensatory damages. But the Treasury Decision was no more explicitly limited to compensatory damages than is the statute before us. It exempted from taxation "an amount received by an individual as the result of a suit or compromise for personal injuries." T. D. 2747, 20 Treas. Dec. Int. Rev. 457 (1918). The Court's entire thesis of taxability rests upon the proposition that this Treasury Decision, which overlooked the obvious fact that "an amount received . . . as the result of a suit or compromise for personal injuries" almost always includes compensation for lost future income, did

not overlook the obvious fact that such an amount sometimes includes "smart-money."

So, to trace the Court's reasoning: The statute must exclude punitive damages because the Committee Report must have had in mind a 1918 Treasury Decision, whose text no more supports exclusion of punitive damages than does the text of the statute itself, but which must have *meant* to exclude punitive damages since it was based on the "return-of-capital" theory, though, inconsistently with that theory, it did *not* exclude the much more common category of compensation for lost income. Congress supposedly knew all of this, and a reasonably diligent lawyer could figure it out by mistrusting the inclusive language of the statute, consulting the Committee Report, surmising that the Treasury Decision of 1918 underlay that Report, mistrusting the inclusive language of the Treasury Decision, and discerning that Treasury *could* have overlooked lost-income compensatories, but could *not* have overlooked punitives. I think not. The sure and proper guide, it seems to me, is the language of the statute, inclusive by nature and doubly inclusive by contrast with surrounding provisions.

The Court poses the question, *ante*, at 7, "*why* Congress might have wanted the exclusion [in §104(a)(2)] to have covered . . . punitive damages." If an answer is needed (and the text being as clear as it is, I think it is not), surely it suffices to surmise that Congress was following the Treasury Decision, which had inadvertently embraced punitive damages just as it had inadvertently embraced future-income compensatory damages. Or if some reason free of human error must be found, I see nothing wrong with what the Court itself suggests but rejects out of hand: Excluding punitive as well as compensatory damages from gross income "avoids such administrative problems as separating punitive from compensatory portions of a global settlement." *Ante*, at 9. How substantial that particular problem is is suggested by the statistics which show that 73 percent of tort cases in state court are disposed of by settlement, and between 92 and 99 percent of tort cases in federal court are disposed of by either settlement or some other means (such as summary judgment) prior to trial. See B. Ostrom & N. Kauder, Examining the Work of State Courts, 1994, p. 34 (1996); Administrative Office of the United States, L. Mecham, Judicial Business of the United States Courts: 1995 Report of the Director 162–164. What is at issue, of course, is not just imposing on the parties the necessity of allocating the settlement between compensatory and punitive damages (with the concomitant suggestion of intentional wrongdoing that any allocation to punitive damages entails), but also imposing on the Internal Revenue Service the necessity of reviewing that allocation, since there would always be strong incentive to inflate the tax-free compensatory portion. The Court's only response to the suggestion that this is an adequate reason (if one is required) for including punitive damages in the exemption is that "[t]he administrative problem of distinguishing punitive from compensatory elements is likely to be less serious than, say, distinguishing among the compensatory elements of a settlement." *Ante*, at 9–10. Perhaps so; and it may also be more simple than splitting the atom; but that in no way refutes the point that it is complicated *enough* to explain the inclusion of punitive damages in an exemption that has already abandoned the purity of a "return-of-capital" rationale.

The remaining argument offered by the Court is that our decision in *Commissioner* v. *Schleier*, 515 U. S. ____ (1995), came "close to resolving"—in the Government's favor—the question whether §104(a)(2) permits the exclusion of punitive damages. *Ante*, at 4. I disagree. In *Schleier* we were faced with the question whether backpay and liquidated damages under the Age Discrimination in Employment Act of 1967 (ADEA) were "damages received . . . on account of personal injuries or sickness" for purposes of §104(a)(2)'s exclusion. As the dissent accurately observed, 515 U. S., at ____ (slip op., at 6) (opinion of O'CONNOR, J.), "the key to the Court's analysis" was the determination that an ADEA cause of action did not necessarily entail "personal injury or sickness," so that the damages awarded for that cause of action could hardly be awarded "on account of personal injuries or sickness." See *id.*, at _____ (slip op., at 7). In the case at hand, we said, "respondent's unlawful termination may have caused some psychological or 'personal' injury comparable to the intangible pain and suffering caused by an automobile accident," but "it is clear that no part of respondent's recovery of back wages is attributable to that injury." *Ibid*. The respondent countered that at least "the liquidated damages portion of his settlement" could be linked to that psychological injury. *Ibid.* And it was in response to *that* argument that we made the statement which the Court seek. to press into service for today's opinion. ADEA liquidated damages, we said, were punitive in nature, rather than compensatory. *Id.*, at _____, and n. 5 (slip op., at 8–9, and n. 5).

The Court recites this statement as though the point of it was that punitive damages could not be received "on account of" personal injuries, whereas in fact the point was quite different: Since the damages were punishment for the conduct that gave rise to the (non-personal-injury) cause of action, they could not be "linked to" the incidental psychological injury. In the present cases, of course, there is no question that a personal injury occurred and that this personal injury is what entitled petitioners to compensatory and punitive damages. We neither decided nor intimated in *Schleier* whether punitive damages that are indisputably "linked to" personal injuries or sickness are received "on account of" such injuries or sickness. Indeed, it would have been odd for us to resolve that question (or even come "close to resolving" it) without any discussion of the numerous considerations of text, history and policy highlighted by today's opinion. If one were to search our opinions for a dictum bearing upon the present issue, much closer is the statement in *United States* v. *Burke*, 504 U.S. 229 (1992), that a statute confers "tort or tort type rights" (qualifying a plaintiff's recovery for the §104(a)(2) exemption) if it entitles the plaintiff to "a jury trial at which 'both equitable and legal relief, including compensatory and, under certain circumstances, punitive damages' may be awarded." *Id.*, at 240 (quoting *Johnson* v. *Railway Express Agency, Inc.*, 421 U.S. 454, 460 (1975)).

But all of this is really by the way. Because the statutory text unambiguously covers punitive damages that are awarded on account of personal injuries, I conclude that petitioners were entitled to deduct the amounts at issue here. This makes it un-

necessary for me to reach the question, discussed *ante*, at 12–13, whether the government's refund action against the O'Gilvie children was commenced within the two-year period specified by 26 U.S.C. §6532(b). I note, however, that the Court's resolution of these cases also does not demand that this issue be addressed, except to the extent of rejecting the proposition that the statutory period begins to run with the mailing of a refund check. So long as that is not the trigger, there is no need to decide whether the proper trigger is receipt of the check or some later event, such as the check's clearance.

For the reasons stated, I respectfully dissent from the judgment of the Court.

Section 280G.—Golden Parachute Payments

Federal short-term, mid-term, and long-term rates are set forth for the month of August 1997. See Rev. Rul. 97–30, this page.

Section 382.—Limitation on Net Operating Loss Carryforwards and Certain Built-In Losses Following Ownership Change

The adjusted federal long-term rate is set forth for the month of August 1997. See Rev. Rul. 97–30, this page.

Section 412.—Minimum Funding Standards

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 1997. See Rev. Rul. 97–30, this page.

Section 467.—Certain Payments for the Use of Property or Services

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 1997. See Rev. Rul. 97–30, this page.

Section 468.—Special Rules for Mining and Solid Waste Reclamation and Closing Costs

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 1997. See Rev. Rul. 97–30, this page.

Section 483.—Interest on Certain Deferred Payments

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 1997. See Rev. Rul. 97–30, this page.

Section 807.—Rules for Certain Reserves

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 1997. See Rev. Rul. 97–30, this page.

Section 846.—Discounted Unpaid Losses Defined

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 1997. See Rev. Rul. 97–30, this page.

Section 1274.—Determination of Issue Price in the Case of Certain Debt Instruments Issued for Property

(Also Sections 42, 280G, 382, 412, 467, 468, 482, 483, 642, 807, 846, 1288, 7520, 7872.)

Federal rates; adjusted federal rates; adjusted federal long-term rate, and the long-term exempt rate. For purposes of sections 1274, 1288, 382, and other sections of the Code, tables set forth the rates for August 1997.

Rev. Rul. 97–30

This revenue ruling provides various prescribed rates for federal income tax purposes for August 1997 (the current month.) Table 1 contains the short-term, mid-term, and long-term applicable federal rates (AFR) for the current month for purposes of section 1274(d) of the Internal Revenue Code. Table 2 contains the short-term, mid-term, and long-term adjusted applicable federal rates (adjusted AFR) for the current month for purposes of section 1288(b). Table 3 sets forth the adjusted federal long-term rate and the long-term tax-exempt rate described in section 382(f). Table 4 contains the appropriate percentages for determining the low-income housing credit described in section 42(b)(2) for buildings placed in service during the current month. Finally, Table 5 contains the federal rate for determining the present value of an annuity, an interest for life or for a term of years, or a remainder or a reversionary interest for purposes of section 7520.

REV. RUL. 97–30 TABLE 1
Applicable Federal Rates (AFR) for August 1997

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-Term				
AFR	5.87%	5.79%	5.75%	5.72%
110% AFR	6.47%	6.37%	6.32%	6.29%
120% AFR	7.07%	6.95%	6.89%	6.85%
130% AFR	7.67%	7.53%	7.46%	7.41%
Mid-Term				
AFR	6.39%	6.29%	6.24%	6.21%
110% AFR	7.04%	6.92%	6.86%	6.82%
120% AFR	7.69%	7.55%	7.48%	7.43%
130% AFR	8.35%	8.18%	8.10%	8.04%

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Mid-Term (continued)				
150% AFR	9.66%	9.44%	9.33%	9.26%
175% AFR	11.31%	11.01%	10.86%	10.77%
Long-Term				
AFR	6.73%	6.62%	6.57%	6.53%
110% AFR	7.41%	7.28%	7.21%	7.17%
120% AFR	8.10%	7.94%	7.86%	7.81%
130% AFR	8.80%	8.61%	8.52%	8.46%

REV. RUL. 97–30 TABLE 2
Adjusted AFR for August 1997

	Period for Compounding			
	Annual	*Semiannual*	*Quarterly*	*Monthly*
Short-term adjusted AFR	4.01%	3.97%	3.95%	3.94%
Mid-term adjusted AFR	4.54%	4.49%	4.47%	4.45%
Long-term adjusted AFR	5.33%	5.26%	5.23%	5.20%

REV. RUL. 97–30 TABLE 3
Rates Under Section 382 for August 1997

Adjusted federal long-term rate for the current month	5.33%
Long-term tax-exempt rate for ownership changes during the current month (the highest of the adjusted federal long-term rates for the current month and the prior two months.)	5.64%

REV. RUL. 97–30 TABLE 4
Appropriate Percentages Under Section 42(b)(2) for August 1997

Appropriate percentage for the 70% present value low-income housing credit	8.54%
Appropriate percentage for the 30% present value low-income housing credit	3.66%

REV. RUL. 97–30 TABLE 5
Rate Under Section 7520 for August 1997

Applicable federal rate for determining the present value of an annuity, an interest for life or a term of years, or a remainder or reversionary interest	7.6%

Section 1288.—Treatment of Original Issue Discount on Tax-Exempt Obligations

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 1997. See Rev. Rul. 97–30, page 12.

Section 7520.—Valuation Tables

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 1997. See Rev. Rul. 97–30, page 12.

Section 7872.—Treatment of Loans With Below-Market Interest Rates

The adjusted applicable federal short-term, mid-term, and long-term rates are set forth for the month of August 1997. See Rev. Rul. 97–30, page 12.

Part III. Administrative, Procedural, and Miscellaneous

Weighted Average Interest Rate Update

Notice 97–44

Notice 88–73 provides guidelines for determining the weighted average interest rate and the resulting permissible range of interest rates used to calculate current liability for the purpose of the full funding limitation of §412(c)(7) of the Internal Revenue Code as amended by the Omnibus Budget Reconciliation Act of 1987 and as further amended by the Uruguay Round Agreements Act, Pub. L. 103–465 (GATT).

The average yield on the 30-year Treasury Constant Maturities for June 1997 is 6.77 percent.

The following rates were determined for the plan years beginning in the month shown below.

Month	Year	Weighted Average	90% to 107% Permissible Range	90% to 110% Permissible Range
July	1997	6.86	6.18 to 7.34	6.18 to 7.55

Drafting Information

The principal author of this notice is Donna Prestia of the Employee Plans Division. For further information regarding this notice, call (202) 622-6076 between 2:30 and 4:00 p.m. Eastern time (not a toll-free number). Ms. Prestia's number is (202) 622-7377 (also not a toll-free number).

Part IV. Items of General Interest

Foundations Status of Certain Organizations

Announcement 97–74

The following organizations have failed to establish or have been unable to maintain their status as public charities or as operating foundations. Accordingly, grantors and contributors may not, after this date, rely on previous rulings or designations in the Cumulative List of Organizations (Publication 78), or on the presumption arising from the filing of notices under section 508(b) of the Code. This listing does *not* indicate that the organizations have lost their status as organizations described in section 501(c)(3), eligible to receive deductible contributions.

Former Public Charities. The following organizations (which have been treated as organizations that are not private foundations described in section 509(a) of the Code) are now classified as private foundations:

An Achievable Dream, Inc., Newport News, VA
AEH Community Development Corporation, Los Angeles, CA
Affiliated Charities Ltd., Beachwood, OH
Affordable Housing Initiative, Chicago, IL
African Voice of Peace, Inc., New York, NY
All Nations Benefit Ministry, Berkeley, CA
Al Murf George Memorial Foundation, Inc., New York, NY
ALS Recovery Foundation, Inc., Miami, FL
Argos Research Institute, Inc., Medford, MA
Arlington Park Civic Association, Columbus, OH
Associated Family Care, Inc., Marquette, MI
Bodies of Christ Churches United Homeless Families & Needy Children, Chicago, IL
Building Better Communities, Inc., Miami, FL
Calquhoun Foundation, Inc., Massapequa, NY
Cascade Corporation, Erdenheim, PA
Center for Education Training and Employment, Blue Bell, PA
The Children's Education Foundation, Inc., Atlanta, GA
Clarion Area Presbyterian Homes, Inc., Clarion, PA
Dane County Welfare Rights Alliance, Madison, WI
Digby Group, Inc., New York, NY
Education in Living Foundation, Dallas, TX
Heros Touch, Washington, DC
International Centre for Family Enterprises, Inc., Southborough, MA
Inter-Tribal Indians of New Jersey, Inc., Cliffwood Beach, NJ
Investment in Aptitude Management by Action Building Lasting Enterprise, Chicago, IL
Kentucky Foundation, Inc., Louisville, KY
Kids in Motion, Great Falls, MT
Lacordaire Academy Endowment Fund, Inc., Rutherford, NJ
Ladies in Action Care, Inc., Groveton, TX
Lafarga Catalogue Raisonne, Inc., New Canaan, CT
Mangum House, Inc., Newark, NJ
March of Pennies, Inc., Rock Falls, IL
Mark Twain Institute, Chevy Chase, MD
Martin Luther King Jr Memorial Foundation, San Antonio, TX
Maximum Independent Living-Lake, Cleveland, OH
Massachusetts State Conference of Young People in Alcoholics Anonymous, Dedham, MA
Mesa CO Business Education Foundation, Grand Junction, CO
Messages From Mary/Mary's Guest House, Inc., Gordon, WI
National Center for Chromosome Inversions, Des Moines, IA
National Center for Patients Rights, Inc., Douglaston Manor, NY
National Foundation Dagas Redeemed, New York, NY
107-109 Avenue Housing Development Fund Corporation, New York, NY
Partners for Success, Inc., Chicago, IL
Polemical Success International, Inc., Boca Raton, FL
Portsmouth Museums Foundation, Inc., Portsmouth, VA
Shabil Associates, Capitola, CA
Shen Ten Ling Bon Teaching Association, Brentwood, NH
Society for the Preservation of Arts Customs & Environments, Las Vegas, NV
Stradivari Society, Chicago, IL
Tatra Foundation, Philadelphia, PA
Texas Association of Cajun Decendants, Inc., Angleton, TX
Third Stream Foundation, Inc., Brookline, MA
Tied to the Tracks, Inc., Boston, MA
Totus Tuus, Winnetka, IL
Transit Workers for Christ, Inc., Staten Island, NY
Troy Local Development Corporation, Troy, NY
Turkish American Medical Association, New York, NY
258 East 4th Street Housing Development Fund Corporation, New York, NY
Universal Institute Corporation, Philadelphia, PA
Urban Human Services, San Francisco, CA
Visitor Industry Human Resource Development Council, Inc., Miami, FL
Venezuelean American Endowment for the Arts, Inc., New York, NY
Washington Square Services Corporation, Newport, RI
Western Michigans Cherry County Playhouse, Inc., Muskegon, MI
Western Upper Peninsula Assessment Services, Inc., Hancock, MI
West Sacramento Christmas Basket Project, Broderick, CA
William Blount High School Alumni Association, Inc., Maryville, TN
Women's Help Centers, Dallas, TX
Worthington Valley Swim Team, Owings Mills, MD
Youth Enterprises & Associates, Inc., Jamaica, NY

If an organization listed above submits information that warrants the renewal of its classification as a public charity or as a private operating foundation, the Internal Revenue Service will issue a ruling or determination letter with the revised classification as to foundation status. Grantors and contributors may thereafter rely upon such ruling or determination letter as provided in section 1.509(a)-7 of the Income Tax Regulations. It is not the practice of the Service to announce such revised classification of foundation status in the Internal Revenue Bulletin.

Definition of Terms

Revenue rulings and revenue procedures (hereinafter referred to as "rulings") that have an effect on previous rulings use the following defined terms to describe the effect:

Amplified describes a situation where no change is being made in a prior published position, but the prior position is being extended to apply to a variation of the fact situation set forth therein. Thus, if an earlier ruling held that a principle applied to A, and the new ruling holds that the same principle also applies to B, the earlier ruling is amplified. (Compare with *modified*, below).

Clarified is used in those instances where the language in a prior ruling is being made clear because the language has caused, or may cause, some confusion. It is not used where a position in a prior ruling is being changed.

Distinguished describes a situation where a ruling mentions a previously published ruling and points out an essential difference between them.

Modified is used where the substance of a previously published position is being changed. Thus, if a prior ruling held that a principle applied to A but not to B, and the new ruling holds that it applies to both A and B, the prior ruling is modified because it corrects a published position. (Compare with *amplified* and *clarified*, above).

Obsoleted describes a previously published ruling that is not considered determinative with respect to future transactions. This term is most commonly used in a ruling that lists previously published rulings that are obsoleted because of changes in law or regulations. A ruling may also be obsoleted because the substance has been included in regulations subsequently adopted.

Revoked describes situations where the position in the previously published ruling is not correct and the correct position is being stated in the new ruling.

Superseded describes a situation where the new ruling does nothing more than restate the substance and situation of a previously published ruling (or rulings). Thus, the term is used to republish under the 1986 Code and regulations the same position published under the 1939 Code and regulations. The term is also used when it is desired to republish in a single ruling a series of situations, names, etc., that were previously published over a period of time in separate rulings. If the new ruling does more than restate the substance of a prior ruling, a combination of terms is used. For example, *modified* and *superseded* describes a situation where the substance of a previously published ruling is being changed in part and is continued without change in part and it is desired to restate the valid portion of the previously published ruling in a new ruling that is self contained. In this case the previously published ruling is first modified and then, as modified, is superseded.

Supplemented is used in situations in which a list, such as a list of the names of countries, is published in a ruling and that list is expanded by adding further names in subsequent rulings. After the original ruling has been supplemented several times, a new ruling may be published that includes the list in the original ruling and the additions, and supersedes all prior rulings in the series.

Suspended is used in rare situations to show that the previous published rulings will not be applied pending some future action such as the issuance of new or amended regulations, the outcome of cases in litigation, or the outcome of a Service study.

Abbreviations

The following abbreviations in current use and formerly used will appear in material published in the Bulletin.

A—Individual.
Acq.—Acquiescence.
B—Individual.
BE—Beneficiary.
BK—Bank.
B.T.A.—Board of Tax Appeals.
C.—Individual.
C.B.—Cumulative Bulletin.
CFR—Code of Federal Regulations.
CI—City.
COOP—Cooperative.
Ct.D.—Court Decision.
CY—County.
D—Decedent.
DC—Dummy Corporation.
DE—Donee.
Del. Order—Delegation Order.
DISC—Domestic International Sales Corporation.
DR—Donor.
E—Estate.
EE—Employee.
E.O.—Executive Order.
ER—Employer.
ERISA—Employee Retirement Income Security Act.
EX—Executor.
F—Fiduciary.
FC—Foreign Country.
FICA—Federal Insurance Contribution Act.
FISC—Foreign International Sales Company.
FPH—Foreign Personal Holding Company.
F.R.—Federal Register.
FUTA—Federal Unemployment Tax Act.
FX—Foreign Corporation.
G.C.M.—Chief Counsel's Memorandum.
GE—Grantee.
GP—General Partner.
GR—Grantor.
IC—Insurance Company.
I.R.B.—Internal Revenue Bulletin.
LE—Lessee.
LP—Limited Partner.
LR—Lessor.
M—Minor.
Nonacq.—Nonacquiescence.
O—Organization.
P—Parent Corporation.
PHC—Personal Holding Company.
PO—Possession of the U.S.
PR—Partner.
PRS—Partnership.
PTE—Prohibited Transaction Exemption.
Pub. L.—Public Law.
REIT—Real Estate Investment Trust.
Rev. Proc.—Revenue Procedure.
Rev. Rul.—Revenue Ruling.
S—Subsidiary.
S.P.R.—Statements of Procedral Rules.
Stat.—Statutes at Large.
T—Target Corporation.
T.C.—Tax Court.
T.D.—Treasury Decision.
TFE—Transferee.
TFR—Transferor.
T.I.R.—Technical Information Release.
TP—Taxpayer.
TR—Trust.
TT—Trustee.
U.S.C.—United States Code.
X—Corporation.
Y—Corporation.
Z—Corporation.

Numerical Finding List[1]

Bulletins 1997–27 through 1997–30

Announcements:

97–61, 1997–29 I.R.B. *13*
97–67, 1997–27 I.R.B. *37*
97–68, 1997–28 I.R.B. *13*
97–69, 1997–28 I.R.B. *13*
97–70, 1997–29 I.R.B. *14*
97–71, 1997–29 I.R.B. *15*
97–72, 1997–29 I.R.B. *15*
97–73, 1997–30 I.R.B. *86*

Delegation Orders:

172 (Rev. 5), 1997–28 I.R.B. *6*

Notices:

97–37, 1997–27 I.R.B. *4*
97–38, 1997–27 I.R.B. *8*
97–39, 1997–27 I.R.B. *8*
97–40, 1997–28 I.R.B. *6*
97–41, 1997–28 I.R.B. *6*
97–42, 1997–29 I.R.B. *12*
97–43, 1997–30 I.R.B. *9*

Railroad Retirement Quarterly Rate:

1997–28 I.R.B. *5*

Proposed Regulations:

REG–104893–97, 1997–29 I.R.B. *13*

Revenue Procedures:

97–32, 1997–27 I.R.B. *9*
97–33, 1997–30 I.R.B. *10*
97–34, 1997–30 I.R.B. *14*

Revenue Rulings:

97–27, 1997–27 I.R.B. *4*
97–28, 1997–28 I.R.B. *4*
97–29, 1997–28 I.R.B. *4*

Treasury Decisions:

8722, 1997–29 I.R.B. *4*
8723, 1997–30 I.R.B. *4*

[1] A cumulative list of all revenue rulings, revenue procedures, Treasury decisions, etc., published in Internal Revenue Bulletins 1997–1 through 1997–26 will be found in Internal Revenue Bulletin 1997–27, dated July 7, 1997.

Finding List of Current Action on Previously Published Items[1]

Bulletins 1997–27 through 1997–30

*Denotes entry since last publication

Revenue Procedures:

96–36
Superseded by
97–34, 1997–30 I.R.B. *14*

96–42
Superseded by
97–27, 1997–27 I.R.B. *9*

[1] A cumulative finding list for previously published items mentioned in Internal Revenue Bulletins 1997–1 through 1997–26 will be found in Internal Revenue Bulletin 1997–27, dated July 7, 1997.

Index

Internal Revenue Bulletins 1997–27 Through 1997–30

For the index of items published during the first six months of 1997, see I.R.B. 1997–27, dated July 7, 1997.

The abbreviation and number in parenthesis following the index entry refer to the specific item; numbers in roman and italic type following the parenthesis refer to the Internal Revenue Bulletin in which the item may be found and the page number on which it appears.

Key to Abbreviations:

RR	Revenue Ruling
RP	Revenue Procedure
TD	Treasury Decision
CD	Court Decision
PL	Public Law
EO	Executive Order
DO	Delegation Order
TDO	Treasury Department Order
TC	Tax Convention
SPR	Statement of Procedural Rules
PTE	Prohibited Transaction Exemption

EMPLOYMENT TAX

Penalty:
- Guidance regarding waiver of failure to deposit penalty for certain taxpayers required to begin using electronic funds transfer on or after July 1, 1997 (Notice 43) 30, *86*

Railroad retirement:
- Rate determination; quarterly (July 1, 1997) 28, *5*

Regulations:
- 26 CFR 31.0–1(a), 31.0–3(f), amended; 31.6302–1(h), added; 31.6302–1(i), redesignated; 31.6302–1T, removed; 31.6302(c)–3, amended; 31.6302–3T, removed; federal tax deposits by electronic funds transfer (TD 8723) 30, *4*

EXCISE TAX

Group health plans; access, portability, and renewability requirements; correction (Notice 41) 28, *6*

Regulations:
- 26 CFR 40.6302(c)–1, amended; 40.6302(c)–1T, removed; federal tax deposits by electronic funds transfer (TD 8723) 30, *4*

INCOME TAX

Depreciation:
- Retail motor fuels outlet (RR29) 28, *4*
- Elections into mark-to-market accounting (Notice 37) 27, *8*

Electronic or magnetic media filing:
- Specifications for 1997 Forms 1098, 1099, 5498, and W–2G (RP 34) 30, *14*

Employee plans:
- Organizations, functions, and authority delegations; director, Employee Plans Division (DO 172(Rev. 5)) 28, *6*

Enhanced oil recovery credit for 1997 (Notice 39) 27, *8*

Extension of time to file, Form 926 (Notice 42) 29, *12*

Forms 1096, 1098, 1099 series, 5498, W–2G Requirements for reproducing paper substitutes (RP 27) 27, *9*

Interest:
- Investment:
  - Federal short-term, mid-term, and long-term rates for July 1997 (RR 27) 27, *4*

Inventories:
- LIFO:
  - Price indexes, department stores, May 1997 (RR 28) 28, *4*

Marginal production rates for 1997 (Notice 38) 27, *8*

Proposed regulations:
- 26 CFR 1.894–1(d), added; guidance regarding claims for certain income tax convention (REG–104893–97) 29, *13*

Regulations:
- 26 CFR 1.894–1T(a) through (c), added; guidance regarding claims for certain income tax convention (TD 8722) 29, *4*
- 26 CFR 1.6302–1, –2, amended; 1.6302–1T, –2T, –3T, –4T, removed; 1.6302–3(c), revised; 1.6302–4, added; federal tax deposits by electronic funds transfer (TD 8723) 30, *4*

Tax forms and instructions:
- Electronic Federal Tax Payment System (EFTPS); electronic remittance system for federal tax deposits and payments (RP 33) 30, *10*

Treatment of Hong Kong and China (Notice 40) 28, *6*

Notes

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